IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2715 OF 2005

Smt. Prabha S. Srivastav ..Petitioner

versus

Shri A. N. Roy & Ors. ..Respondents

Mr. U. N. Tripathi for the Petitioner.

Mr. D. S. Mhaispurkar, APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
S. A. BOBDE,JJ.

DATE : 29TH JUNE, 2006

P.C. :

1. Heard learned counsel for the petitioner and learned APP for the State.

2. This petition challenging the detention is filed by the mother of the detenu. He was detained under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders and Dangerous Persons Act, 1981 (Mah. Act. No. LV of 1981) (Amendment 1996). In the petition many grounds have been raised by the petitioner.

However, Mr. Tripathi presses only one point and i.e. delay in deciding the representation of the detenu. This ground is raised in paragraph 9(C) of the petition. It is stated that the representation of the detenu dated 12.9.2005 was sent to the Government, which was received by the Government on 14.9.2005, but it was rejected on 4.10.2005 belatedly after three weeks. Further particulars in this regard were sought by the petitioner from the affidavit of the State Government. Mr. Tripathi pointed out from paragraph No. 3 of the affidavit of Dattatraya Baburao Borhade, Under Secretary to the Government of Maharashtra, wherein it is admitted that representation was received on 14.9.2005 in the Department. Concerned clerk received it on 15.9.2005, thereafter parawise remarks were called vide letter dated 16.9.2005 from the Commissioner of Police, Greater Mumbai. When the concerned Assistant contacted Commissioner of Police on telephone to remind them in this regard, it was informed that parawise comments were already submitted to the Government vide letter dated 20.9.2005. Then it is stated in the affidavit **"It appears that the original letter dated 20.9.2005 of the Commissioner of Police, Brihan Mumbai was**

misplaced. Therefore a copy of the same letter was called which was received on 1.10.2005. The representation was scrutinized and processed thereafter.." Mr. Tripathi, therefore, contended that the explanation that the letter dated 20.9.2005 of the Commissioner of Police being misplaced, cannot and should not be accepted because in detention matters any kind of negligence or neglect vitally and materially affects the right of the detenu. Mr. Tripathi relied upon **unreported judgment of this Court dated 4.5.2006 in Writ Petition No. 2311 of 2005 (Pramod Tukaram Pawar vs. The State of Maharashtra**, wherein, unexplained delay of 7 days was considered fatal to the continuation of the detention order. Mr. Tripathi stated that here in this case there is no explanation, much less a satisfactory explanation, from 14.9.2005 to 1.10.2005, and, for this unexplained delay, the detention order is to be quashed.

3. The learned APP contended that the delay in itself is not material, but, the explanation given has to be satisfactory, and, according to him, if in handling the papers, a particular letter dated 20.9.2005 of the Commissioner of Police was

misplaced, then, it cannot be said that there was deliberate negligence or neglect on the part of the Government.

4. We, are not satisfied with this submission. In ordinary cases, not involving detention, such an explanation may be accepted by the court but where every day matters then this explanation of misplacing of the letter, cannot be accepted, particularly, when there is nothing in the said affidavit as to who was the person in whose custody the letter was, when he has received from the Commissioner of Police, how and when it came to his notice that it was lost, are, all circumstances not explained in the affidavit. Therefore, such an explanation cannot be accepted. Representation dated 12.9.2005 received on 14.9.2005 came to be rejected on 3.10.2005, and, the explanation about misplacement of the file, is not acceptable. Therefore, the petition has to be allowed. In the result, the Petition is allowed. Rule made absolute.

(D.G. DESHPANDE, J.)

(S.A. BOBDE, J.)